RECENT CASES.

BILLS AND NOTES — DEFENSES — FRAUD AS DEFENSE AGAINST INDORSEE: BURDEN OF PROOF. — The indorsee of a promissory note sued the maker, who pleaded that the note was procured from him by fraud and that the plaintiff was not a *bonâ fide* purchaser. *Held*, that the burden is on the plaintiff to show that he is a holder for value in good faith. *Cedar Rapids National Bank* v. *Myhre Bros.*, 107 Pac. 518 (Wash.).

For a discussion of the principles involved, see 23 HARV. L. REV. 640.

BILLS AND NOTES — INDORSEMENT — WHEN ASSIGNMENT OPERATES AS INDORSEMENT. — A note was transferred to the plaintiff with the words "I hereby assign my interest in this note," etc., written on the back. *Held*, that this is an assignment, not an indorsement. *Gale* v. *Mayhew*, 125 N. W. 781 (Mich.).

If the words used are "I assign this note," they have the effect of an indorsement. *Markey* v. *Corey*, 108 Mich. 184. But see *Briggs* v. *Latham*, 36 Kan. 205. But a distinction has been taken if the words "I assign my interest in this note" are used, since an indorsement involves more than a mere transfer of an interest. *Aniba* v. *Yeomans*, 39 Mich. 171. For a discussion of a case opposed to the principal case, see 12 HARV. L. REV. 566.

BILLS AND NOTES — OVERDUE PAPER — MATURITY UPON DEFAULT IN PAYMENT OF ONE OF SERIES. — The defendant gave the plaintiff a number of promissory notes, payable at different times, and secured by a chattel mortgage containing a clause that upon default in the payment of any of the notes the rest should immediately become due. The plaintiff recovered on several of the notes as they became due. Upon a subsequent default, the plaintiff again brought suit. *Held*, that the entire debt was due at the time of the first default, and the plaintiff's right of action was merged in his first judgment. *Banzer* v. *Richter*, 123 N. Y. Supp. 678 (Sup. Ct.).

For a discussion of a similar case reaching an opposite result, see 23 HARV. L. REV. 146.

BILLS AND NOTES — OVERDUE PAPER — PROMISE TO PAY ATTORNEY'S FEES. — An action was brought on a promissory note, containing a promise to pay ten per cent attorney's fees, if the note should be put into an attorney's hands for collection or suit. *Held*, that in order to recover on this promise the plaintiff must allege that he has paid, or contracted to pay, a certain amount for such services; and this amount will be the measure of his recovery. *Reed* v. *Taylor*, 129 S. W. 864 (Tex., Ct. Civ. App.).

The validity of a promise to pay attorney's fees is upheld by a small majority of the jurisdictions in this country. *Chestertown Bank of Maryland* v. *Walker*, 163 Fed. 510. *Contra*, *Exchange Bank* v. *Apalachian Land & Lumber Co.*, 128 N. C. 193. This majority is itself divided on the question of negotiability, the prevailing view being that such a note is negotiable. *Cudahy Packing Co.* v. *State Nat. Bank of St. Louis*, 134 Fed. 538. *Contra*, *Findlay* v. *Pott*, 131 Cal. 385. The argument against negotiability is that the amount of the note is uncertain, since it cannot be ascertained in advance whether an attorney will be employed, or, if so, what his charges will be. From this it appears that even when the amount of the fee is stipulated, the courts regard the promise as one of indemnity, and would limit recovery to the amount actually paid the attorney. Of those courts favoring negotiability, a few have decided squarely that this is a promise of indemnity. *Campbell* v. *Worman*, 58 Minn.

561. But instead of requiring the plaintiff to aver the amount paid in attorney's fees, some cases hold that the defendant may show, in mitigation of damages, that the amount was less than the sum stipulated. *Kennedy* v. *Richardson*, 70 Ind. 524. In several jurisdictions the plaintiff can recover the full amount as liquidated damages. *North Atchison Bank* v. *Gay*, 114 Mo. 203; *Exchange Bank of Dallas* v. *Tuttle*, 5 N. M. 427.

CARRIERS — CONTROL AND REGULATION — RIGHT TO RECEIVE COMPENSATION IN BARTER. — The Attorney-General brought an action to enjoin the defendant railroad from performing a contract to furnish transportation in return for advertising. *Held*, that such an agreement is a violation of the act forbidding a carrier to collect "a greater or less conpensation from one person than another." *State* v. *Union Pacific Ry. Co.*, 126 N. W. 859 (Neb.).

It would seem to be a necessary interpretation of the statutes regulating commerce that money should be the only standard of compensation receivable by carriers. Otherwise it would be impossible to insure equal charges to all. See *United States* v. *Atchison, Topeka, & Santa Fé Ry. Co.*, 163 Fed. 111; *Union Pacific Ry. Co.* v. *Goodridge*, 149 U. S. 680. Rebates and other forms of discrimination would be readily practicable with such fluctuating standards of value.

CARRIERS — LIMITATION OF LIABILITY — EXEMPTION FROM LIABILITY FOR NEGLIGENCE. — The plaintiff, a porter in the employ of an express company, was injured by the backing of the defendant's train. The express company had agreed with the defendant that its employees should have no cause of action for injuries resulting from the defendant's negligence, and the plaintiff had ratified this agreement in his contract of service, and assumed all the risks of his employment. *Held*, that the plaintiff cannot recover. *Dodd* v. *Central R. Co. of New Jersey*, 76 Atl. 544 (N. J., Sup. Ct.).

The general rule, supported by the weight of authority, is that a common carrier cannot limit its liability for injuries resulting from negligence. *Railroad Co.* v. *Lockwood*, 17 Wall. (U. S.) 357. The principal case, however, follows many similar cases in holding that the railroad does not stand in the relation of common carrier to the express company, and consequently may contract with it on any terms. *Express Cases*, 117 U. S. 1; *Baltimore & Ohio Southwestern Ry. Co.* v. *Voigt*, 176 U. S. 498. Considerable doubt is entertained as to the correctness of these decisions, and some state courts are opposed. *McDuffee* v. *Portland & Rochester R. R.*, 52 N. H. 430. The principal case involves the further question of the validity of the plaintiff's contract with his employer, exempting the railway from liability. While the principle of freedom of contract is not to be lightly disregarded, many courts have held that a contract between master and servant relieving the former from liability for negligence is against public policy and void. *Johnston* v. *Fargo*, 184 N. Y. 379. The present case is a weaker one, since the contract purports to exempt not the employer but the railway; but the economic disadvantage under which the employee bargains for employment is as great in one case as in the other.

CARRIERS — LIMITATION OF LIABILITY — NECESSITY FOR SPECIAL CONSIDERATION. — In an action against a common carrier for injury to goods in transit, the defendant pleaded a limitation of liability in the bill of lading. It did not appear that the plaintiff had been given an opportunity to choose between rates based upon the difference in the liability to be assumed by the defendant. *Held*, that such a limitation is void. *Pittsburg, etc. Ry. Co.* v. *Mitchell*, 91 N. E. 735 (Ind.).

The United States Supreme Court has held, in effect, that with nothing further than the mere assent of the shipper a carrier may limit its common-law